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90-1035

Supreme Court, U.S.
FILED
OCT 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

IN THE

Supreme Court of the United States

JANUARY TERM 1991

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

CITY OF SAN JOSE, CALIFORNIA, et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH B. QUANSAH, JR.
Petitioner, pro se
P.O. Box 51759
San Jose, CA 95151-5759
Telephone (408) 578-4113

QUESTION PRESENTED

Did the United States Court of Appeals for the Ninth Circuit properly dismiss prisoner petitioner's de novo appeal for lack of prosecution but it did not deprive him the Civil Rights under Title 42, U.S. §§ 1981, 1983 and the Constitutional Rights under Fourth Amendment, Sixth Amendment and Fourteenth Amendment?

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PARTIES TO THE PROCEEDING

KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CITY OF SAN JOSE, CALIFORNIA; POLICE DEPARTMENT, CITY OF SAN JOSE; OFFICER MACIAS in his Official Capacity; SANTA CLARA COUNTY SHERIFF'S DEPARTMENT; COUNTY PRISON ADMINISTRATION; DAWN L. GRUWELL and RAFAEL A. MORALES,

Respondents.

OPINION BELOW

Petitioner filed a complaint in U.S. District court for the Northern District of California against above respondents and the District court dismissed the prisoner complaint for lack of prosecution. Petitioner thereafter, filed a de novo appeal in the District court and U.S. Court of Appeals for the Ninth Circuit filed a memorandum dated April 26, 1990. A copy is attached hereto as Appendix 3. The petition for rehearing was denied in an order dated September 7, 1990. A copy is attached hereto as Appendix 2.

JURISDICTION

The jurisdiction of this court is invoked 28 U.S.C. § 1254(1). The Ninth circuit Court of Appeals dismissed petitioner's appeal in a Memorandum dated April 26, 1990. The petition for rehearing was filed on May 8, 1990 in Ninth Circuit Court of Appeals and it was denied in an order dated September 7, 1990. Petitioner invoked 28 U.S.C. §§1291, 1292a(1) in the Ninth Circuit to confer jurisdiction to the Ninth Circuit. Petitioner invoked 28 U.S.C. §§1343(a), 1391 for the purpose of jurisdiction in the District court. Petitioner's notice of appeal for review in Supreme Court of the United States was returned to him as abolished. Petitioner and all the parties involved in this case are residents of San Jose, California.

STATUTE INVOLVED

The statutes involved are Title 42 U.S.C. §§ 1981, 1983 and 28 U.S.C. § 1343a(3). The Fed. R. Civ. P. Rule 4(b) and Rule 4(d)(6) are also involved. Title 28 U.S.C. § 2101(e) is involved.

Portion of these statutes are provided in relevant parts and attached hereto as Appendix 1.

STATEMENT OF THE CASE

Quansah had an argument with Rafael A. Morales after Morales dumped his bathroom trash in his grocery bag containing groceries. Police officer, Macias who came to the scene of the incidence with the aide of Dawn L. Gruwell false arrested him and he was false imprisoned by Santa Clara Sheriff's Department for seven days in Santa Clara County main jail, the Elmwood prison or the so called "Farmer" without an arraignment or public trial. Officer Macias also refused to identify himself before his arrest but frisked and searched him. There is a rule of seventy two hours imprisonment when any arrested person is taken into this prison. Quansah claims, however, he was imprisoned for seven (7) days and set free.

Quansah as a result suffered mental depression, mental as well as emotional distress, injuries from the roughing of handcuffs, weight-loss, monetary harms and fears to disregard.

Quansah consequently, filed a complaint in U.S. District court for the Northern District of California as a result. Quansah asserted in his complaint a violation of his rights under Title 42, U.S.C. §§§ 1981, 1982, 1983 and Constitutional deprivation under Fourth Amendment, Sixth Amendment, Fourteenth Amendment.

The District court dismissed the complaint upon respondents Santa Clara County Sheriff's Department motion to dismiss for failure to state a claim upon which relief may be granted with 30 days leave to amend and upon City of San

Jose and Officer Macias motion to quash service of process by granting respondents motion. The District court judge even telephoned Quansah and stopped him from appearing at the scheduled motion conference to dismiss the case. We must agree prisoner complaints are not dismissed summarily.

The Police Department, City of San Jose, responded to the complaint that it received service of process but the District court quashed service of process in their favor. The District court eventually issued a final order to dismiss the entire case for lack of prosecution while, a trial date should have been scheduled. Moreover, Quansah served all parties in the same procedure as the Police and Sheriff's Department, therefore, this is a reversible error.

Quansah subsequently, filed an appeal de novo in the District court. Quansah therein invoked 28 U.S.C. § 1292a(1) to confer jurisdiction upon Ninth Circuit. Consequently, Quansah invoked 28 U.S.C. § 1343(a) in the District court on grounds of jurisdiction. The Appeals court issued a memorandum to affirm the judgment of the District court. However, some of the parties did not file their briefs or any motion in Ninth Circuit and Ninth Circuit did not give any ruling to that effect.

Quansah filed a Notice of Appeal in Ninth Circuit for a review in the Supreme Court of the United States and it was returned to him. Quansah filed a petition for rehearing and it was denied in an order dated September 7, 1990.

Quansah claims the Supreme Court of the United States is compelled to conduct a comprehensive examination into this matter for a just resolution.

Quansah seeks to appear in Supreme Court of the United States to argue all relevant issues he could not present.

STATEMENT OF REASONS

Quansah claims, to imprison civilized people before arraignment or public trial is a burden and something of the past. Quansah was imprisoned for seven (7) days and set free without an arraignment or public trial, leaving him in fears to disregard.

Quansah argues he filed a complaint in the District court and after service of process was completed Santa Clara County Sheriff's Department motioned to dismiss the complaint for failure to state facts sufficient to state a claim. The City of San Jose, California; Police Department, City of San Jose and Officer Macias motioned to quash service of process even though respondents received the complaint and summons. Quansah responded their motion and seeked for a trial. The District court dismissed the prisoner complaint by summary judgment. Quansah alleges, the District court granted respondents motion to dismiss for failure to state facts sufficient to state a claim and quashed service of process. The District court after about a year later issued an order for a hearing on May 22, 1989 and refused to give Quansah a reasonable notice to appear. Quansah was scheduled to appear in U.S. District court in New York on May 19, 1989. Quansah spoke to Mr. Ballah the Deputy Clerk who issued the May 22, 1989 hearing order on May 12, 1989 before his journey to New York. Quansah told Mr. Ballah he was scheduled to appear in U.S. District court in New York on May 19, 1989 and wanted to know the status of his case. Quansah was speaking to him frequently before this telephone call about his case. Mr. Ballah told Quansah he was going to dismiss the case and he will send him a copy of the order by mail. Quansah was in New York City but did not receive any mail from the District court in San Jose until after his May 19, 1989 scheduled appearance in New York when he received the order to appear in the District court in his mail box in New York City. Quansah alleges, even though he changed his address to San Jose address, the District court mailed this order to his New York address which was unfounded in their records. Quansah argues, however, he tried to attend the

May 22, 1989 hearing but arrived late in San Jose and did not attend. Quansah telephoned the Clerk's Office and Mr. Ballah the next day. Quansah alleges, Mr. Ballah told him the case was dismissed. Quansah argues, he went to the Clerk's Office to pick-up a copy, but it was not filed. In a few days later, he received a copy of the judgment at the Clerk's Office and the case was dismissed for lack of prosecution. Quansah argues, the District court erred in dismissing this case due to the above reasons and this is a reversible error. Quansah filed an appeal de novo in the District court and the Ninth Circuit affirmed the District court judgment without an explanation. Quansah claims his failure to attend the hearing was due to lack of reasonable notice. See Mitchum v. Purvis, 650 F. 2d 647 (5th Cir. 1981) (prisoner suits can not be dismissed summarily for purposes of docket control); Wolff v. McDonnell, 418 U.S. 539 579, 94 S Ct 2963, 2986, 41 L. Ed. 2d 935 (1974); Heidelberg v. Hammer, 577 F. 2d 429 (7th Cir. 1978); Muhammad v. Warden, Baltimore City Jail, 849 F. 2d 107 (4th Cir. 1988); Poole v. Lambert, 819 F. 2d 1025 (11th Cir. 1987)(per curiam). Quansah asserts herein, a linquist who does not know how to talk in refering to Ninth Circuit citation at page 3(a) to this entitled case will just say Honorable Justices, "Hernandez v. Whiting, 881 F. 2d 768, 770 (9th Cir. 1989)" is obvious in its vernacular. Also see Holt v. Pitts, 619 F. 2d 558, 562 (6th Cir. 1980); Goss v. Illinois, 312 F. 2d 257, 259 (7th Cir. 1963); Gilker v. Baker, 576 F. 2 245 (1978); Haines v. Kerner, 404 U.S. 519, 520-521, 92 S. Ct 594, 30 L. Ed. 2d 652 (1972); McKnight v. Blanchard, 667 F. 2d 477 (5th Cir. 1982); Sigafus v. Brown, 416 F. 2d 105 (7th Cir. 1969); Williams v. Liberty, 461 F. 2d 325, 327 (7th Cir. 1972); Rudolph v. Locke, 594 F. 2d 1076 (5th Cir. 1979); Peterson v. Nadler, 452 F. 2d 754 (8th Cir. 1971).

Quansah argues City of San Jose, California; Police Department, City of San Jose and Officer Macia motioned to quash service of process after he completed service of process and there were enough evidence on the record to prove they received service of process. Quansah alleges, the District court granted their motion without considering the

return receipts he filed with his affidavit of service and the Ninth Circuit also affirmed the District court order. See Stone v. Morris, 546 F. 2d 730, 735 (7th Cir. 1976). Quansah further claims, the Ninth Circuit citation "Anderson v. Air West, Inc., 542 F. 2d 522 524 (9th Cir. 1976)" stands accused. Quansah alleges, the Sheriff's Department received the same service of process but that was enough to complete service of process.

Quansah argues, Police Department, City of San Jose, County Prison Administration, D.L. Gruwell and R.A. Morales received service of process but did not respond neither in the District court nor in the Ninth Circuit with the exception of the Police Department which motioned in the District court. However, the Ninth Circuit did not give any ruling to this issue. See Fed. R. App. P. Rule 31(c).

Quansah argues, the District court received back the interlocutory order to amend after it was mailed to a wrong address. Quansah alleges, although the District court had his correct address on file, the District court did not try to send the order to his correct address, therefore Dellinger v. Mitchell, 442, F. 2d 782, 786 (D.C. Cir. 1971) stands accused.

Quansah alleges, he requested a court appointed counsel but the District court did not respond to that issue. See Action v. Gannon, 450 F. 2d 1227 (8th Cir. 1971); Price v. Johnston, 334 U.S. 266, 285 - 86, 68 S. Ct. 1049, 1059 - 60, 92 L. Ed 1356 (1948). Quansah further alleges, he was unemployed for about two years, but the District court did not respond to that issue. The District court dismissed his prisoner complaint sua sponte by summary judgment. Also see 28 U.S.C § 1915. Quansah argues, due to the above reasons, the District court judge abused his discretion in dismissing the complaint for lack of prosecution which is a very harsh decision for the claims in Quansah's complaint and the circumstances therein.

Quansah argues, there was no probable cause for his arrest as well as his charges for battery and assault under California penal code Section 240 and Section 242 by Police

Officer Macias. Quansah alleges, an arrest without a probable cause, therefore, was a false arrest. Morales who is a party to this case and was at the scene of this incidence confessed to the police officer that Quansah did not beat him and did not beat Gruwell. Quansah contends officer Macias was not at the scene of the incidence and there must be an evidential proof to subject him to an unwarranted arrest. Quansah argues, this is an issue for the jury to decide and this makes this case a reversible error. Quansah alleges, the police officer did not identify himself before and after his arrest and he merely had his name when he received a copy of the charges filed against him from a sheriff. Quansah argues, officer Macias radioed the police station before his arrest and that must be considered an official policy to rest liability on respondents. The police officer had the authority and power to arrest and he was arrested hence, this must be considered an official policy and under color of State Law.

Quansah argues, eventually, officer Macias was conducting his official duties when his acts, and decisions which were so erroneous violated his rights under Congressional Acts Title 42 §§ 1981, 1983 and deprived his Constitutional rights under Fourth Amendment for unreasonable searches and seizures; Sixth Amendment for his rights to a speedy and public trial or arraignment, while confronted with the witnesses against him, and having a compulsory process for obtaining witnesses in his favor. Herein, Quansah's rights under the Fourteenth Amendment for Liberty, for the due process of law and equal protection of the laws were also violated.

Quansah argues, after his arrest, the police officer handcuffed him and chained him with other arrested people at the police detention station, then transported them to Elmwood jail, the main jail. Quansah argues, in this jail he was searched by prison sheriffs. He was thereafter ordered to take off his clothes, underwear and shoes. He was then given prison clothes and shoes in exchange. Quansah alleges, he was imprisoned in the main

jail for seven days before his release without an arraignment or a public trial in violation to above civil rights. Quansah argues, the sheriff is the keeper of the county jail and the sheriff must know a lawful prisoner to take in the prison. Quansah further contends, the conduct, acts and edicts of the sheriffs must be considered an official policy and under color of State Law. Quansah argues, the Sheriff's Department has a minimum of Seventy two (72) hours imprisonment policy in the main jail which has to be served by every person who was taken into that prison. However, Quansah was imprisoned for seven (7) days in a much capricious policy. Quansah argues the seven days imprisonment and the delay in arraignment must be decided by a jury, therefore, making this case a reversible error. Quansah alleges, as a result of all the above, he suffered mental depression, mental as well as emotional distress, humiliation, weight loss and fears to disregard. Quansah herein, fears that such police and sheriff's act as well as conduct will recur. See Black v. Stephens, 662 F. 2d 181 (3d Cir. 1981); Brown v. Byer, 870 F. 2d 975 (5th Cir. 1989); Douthit v. Jones, 619 F. 2d 527 (5th Cir. 1980); Dunaway v. New York, 442 U.S. 200, 60 L Ed. 2d 824, 99 S Ct. 2248 (1979); Hall v. Ochs, 817 F. 2d 920 (1st Cir. 1987); Marrero v. City of Hialeah, 625 F. 2d 499 (5th Cir. 1980); McKenzie v. Lamb, 738 F. 2d 1005 (1984); Melear v. Spears, 862 F. 2d 1177, 1184 (5th Cir. 1989); Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed 2d 288 (1967) and Smiddy v. Varney, 665 F. 2d 261 (1981). Finally, see Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L. Ed. 2d611, 98 S Ct. 2018, at 2037-38 (1978) for the determination of liability.

Conclusion

Quansah seeks to recovery from such unreasonable burden from above case. Quansah claims the above case must be reversed.

Quansah claims City of San Jose, California must hire more magistrate judges and build more detention cells to stop this unnecessary burden of unlawful imprisonment of its citizens without arraignment or public trial. Quansah claims, the intentional deprivation due to the above case is unreasonable to mankind.

DATED: San Jose, California
October 8, 1990

Respectfully Submitted,

/S/ KENNETH B. QUANSAH, JR.

KENNETH B. QUANSAH, JR.
Petitioner, pro-se
P.O. Box 51759
San Jose, CA 95151-5759
Telephone (408) 578-4113

CERTIFICATE OF SERVICE

On October 29, 1990 I served the attached document entitled Petition For a Writ of Certiorari by mailing two copies certified, first class, postage prepaid, return receipt requested to respondents counsels by attached addresses.

/S/ KENNETH B. QUANSAH, JR.

KENNETH B. QUANSAH, JR.
Petitioner, pro-se
P.O. Box 51759
San Jose, CA 95151-5759
Telephone (408) 578-4113

PARTIES ADDRESSES

Steven M. Woodside, Esq., County Counsel
Deborah A. Ryan, Esq., Deputy County Counsel
County Government Center, East Wing
70 West Hedding Street, 9th Floor
San Jose, CA 95110

Attorneys for Santa Clara County Sheriff's Department and County Prison Administration

Joan R. Gallo, Esq., City Attorney
Clifford S. Greenberg, Esq., Deputy City Attorney
Office of the City Attorney
151 W. Mission Street
San Jose, CA 95110

Attorneys for City of San Jose, California, Police Department, City of San Jose and Officer Macias

Dawn L. Gruwell, Esq.
5820 Cadiz Dr.
San Jose, CA 95123

Rafael A. Morales, Esq.,
5820 Cadiz Dr.
San Jose, CA 95123

APPENDICES

STATUTE INVOLVED

42 U.S.C. § 1981 provides in relevant part:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

42 U.S.C. § 1983 provides in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

Fed. R. Civ. P. Rule 4(d)(6) provides in relevant part:

"Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant."

28 U.S.C. § 1343(a)(3) provides in relevant part:

"To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: SEPTEMBER 7, 1990
NO. 89-15809
USDC NO. CV-87-20730-WAI

ORDER

KENNETH B. QUANSAH, JR.
Plaintiff-Appellant,

vs.

CITY OF SAN JOSE, et al.,
Defendants-Appellees

Before:

TANG, NELSON and O'SCANNLAIN,
Circuit Judges

Plaintiff-Appellant's petition for rehearing is DENIED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: APR. 26, 1990
NO. 89-15809
USDC NO. CV-87-20730-WAI
MEMORANDUM *

KENNETH B. QUANSAH, JR.,
Plaintiff-Appellant,

vs.

CITY OF SAN JOSE, ET AL.,
Defendants-Appellees

Appeal from the United States District Court
for the Northern District of California
William A. Ingram, Chief District Judge, Presiding
Submitted April 24, 1990**

Before: TANG, NELSON, and O'SCANNLAIN, Circuit Judges.

Kenneth B. Quansah, Jr. appeals pro se the district court's sua sponte order dismissing his action under Fed. R. Civ. P. 41(b) for failure to prosecute his case. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

We review the district court's Rule 41(b) dismissal for failure to prosecute for an abuse of discretion. See Hernandez v. Whiting, 881 F.2d 768, 770 (9th Cir. 1989). Under this standard, we will not reverse the court's decision unless we have "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976).

When considering whether to dismiss an action for lack of prosecution, a district court must consider" '(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits and (5) the availability of less drastic

sanctions.' "Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (per curiam) (quoting Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)). Because the district court did not explicitly set forth its consideration of the relevant factors, we review the record independently. See Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987), cert. denied, 109 S. Ct. 59 (1988).

Quansah filed his complaint on November 5, 1987. He last took action on his case on February 16, 1988, when he filed a request for a court-appointed attorney. On April 14, 1988, the district court granted Santa Clara County Sheriff's Department's motion to dismiss, but allowed Quansah thirty days leave to amend. On May 3, 1989, the court issued an order to show cause why the action should not be dismissed and noticed a hearing for May 22, 1989. Quansah failed to appear at the hearing. On May 24, 1989, the court ordered Quansah's action dismissed.

The first two dismissal factors support the district court's decision to dismiss Quansah's action. Quansah's failure to take any action for well over a year impeded the expeditious resolution of his case. See Malone, 833 F.2d at 131. Also, given Quansah's failure to offer any excuse for his delay, as discussed below, we find no fault with the district court's management of its docket. See Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984) (stating that the district court is best situated to determine how to manage its docket), cert. denied, 470 U.S. 1007 (1985).

Third, Quansah had the ultimate burden of persuasion as to the reasonableness of his delay and the lack of prejudice to the defendants. See Franklin v. Murphy, 745 F.2d 1221, 1232 (9th Cir. 1984). Quansah contends that he never received a copy of the April 14, 1988 order because the district court mailed the order to the wrong address.

Under Rule 41(b), however, Quansah was required to prosecute his case with reasonable diligence. See Moore v. Telfon Communications Corp., 589 F.2d 959, 967 (9th Cir. 1978). There is no evidence in the record that Quansah tried

to contact the court to discover the status of his case after February 16, 1988.[1] Moreover, Quansah states that after learning of the April 14, 1988 order, he refused to amend his complaint. Finally, Quansah offered no excuse for his failure to either appear at the May 22, 1989 hearing on the order to show cause or submit pleadings in support of his position.[2] Under these circumstances, Quansah's delay in proceeding with his case was unreasonable. Such delay creates a presumption of prejudice to the defendants which Quansah has failed to rebut. Henderson, 779 F.2d at 1423.

Fourth, the district court's order to show cause expressly warned Quansah that his action would be dismissed if he failed to proceed with his case. This warning satisfied the district court's obligation to consider less drastic alternatives to dismissal. See Malone, 833 F.2d at 131.[3]

Finally, the public policy in favor of deciding cases on their merits weighs against dismissal. See id. at 133 n.2. This factor, however, is insufficient to outweigh the other four factors which, in this case, support dismissal. See id.

From our independent review of the record, see Malone, 833 F.2d at 130, we are not convinced that the district court committed a clear error in judgment in its weighing of the relevant factors, see Anderson, 542 F.2d at 524. We find, therefore, that the court did not abuse its discretion in dismissing Quansah's action for failure to prosecute his case. See Hernandez, 881 F.2d at 770.

AFFIRMED.[4]

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

FOOTNOTES:

1. Quansah states in his brief that on numerous occasions he tried to discover if any orders had been issued. However, he offers no explanation for why he did not bring his efforts to the district court's attention at the May 22, 1989 hearing.

2. We note that the order to show cause was sent to Quansah's correct address.

3. We note, moreover, that Local Rule 235-10 of the Northern District of California provides that the "failure by plaintiff to take action for four months shall be presumptive evidence of lack of prosecution." Despite Quansah's pro se status, he had an obligation to be aware of the local rules of court. See Swimmer v. IRS, 811 F.2d 1343, 1345 (9th Cir. 1987).

4. On August 15, 1989, Quansah filed with this court a motion to join the State of California as a defendant-appellee in this case. In light of our decision to affirm the district court's dismissal of Quansah's action, the motion is denied.